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11 KeyBank USA

12 **UNITED STATES BANKRUPTCY COURT**
13 **NORTHERN DISTRICT OF CALIFORNIA**
14 **OAKLAND DIVISION**

15 In re

16 Mark Everett Duran and Jennifer Kathleen Duran,
17 Debtors.

Case No. 10-42971

Chapter 13

R.S. No. RFM-004

Hon. Charles Novak

Hearing-

Date: July 10, 2015

Time: 10:00 am

Place: Courtroom 215

U.S. Bankruptcy Court

280 S. First St., San Jose, CA 95113

18 **MOTION FOR RELIEF FROM THE AUTOMATIC STAY UNDER 11 U.S.C. § 362**

19 KeyBank USA ("Movant"), moves this Court for an Order granting Movant relief from the
20 automatic stay to exercise its remedies under its secured interest and non-bankruptcy law, including, but
21 not limited to, foreclosure upon and sale of the security interests of Debtors and the United States
22 Trustee, in certain personal property as set forth herein. Movant alleges:

23 1. This Court has jurisdiction over this matter pursuant to 11 U.S.C. § 361 and § 362 and
24 Federal Rules of Bankruptcy Procedure 4001, 9013, and 9014, Local Bankruptcy Rules for the Northern
25 District, Rule 4001-1. This is a core proceeding under 28 U.S.C. § 157(b)(2).

26 2. The Debtors filed the instant Bankruptcy under Chapter 13 of the United States
27 Bankruptcy Code on or about March 18, 2010.
28

1 3. Movant is the holder of a Security Agreement, Note and Disclosure Statement payable
2 by the Debtors with a present balance of \$10,678.24, as of May 7, 2015 (the "Agreement") secured by a
3 with the Secretary of State encumbering property (the "Vehicle"), a 2003 Centurion Escalade Boat,
4 VIN# FNEJ0604K203.

5 4. Movant alleges the value of the Property to be approximately \$16,690.00 based upon the
6 N.A.D.A. Appraisal Guides attached hereto.

7 5. Pursuant to the Debtors' proposed, amended or modified Chapter 13 Plan, payments to
8 Movant were to be "outside" by a third party and pursuant to contract. The Debtors are presently in
9 default by not making all required payments. Said default is material and constitutes "cause" for
10 termination of the automatic stays described above. Further, since no payments are being made to
11 Movant during the operation of the automatic stays, Movant is being denied adequate protection. Relief
12 from the automatic stays is, therefore, warranted under 11 U.S.C. §362(d)(1) and Fed. R. Bankr. P.
13 4001(a)(3).
14

15 6. Cause exists to grant this motion because the balance due to Movant is rapidly
16 increasing and Movant's security interest is in jeopardy unless this Court grants the requested relief.
17

18 7. Cause exists to grant this Motion because Debtors have failed to make payments to the
19 Movant as required by the Agreement.

20 8. If Movant is not permitted to foreclose its security interest in the Property, it will suffer
21 irreparable injury, loss and damage.

22 WHEREFORE, Movant prays that this Court enter its order that:

23 A. The automatic stay shall be lifted to permit Movant, its successors and/or assigns, to
24 exercise its lawful remedies under its security instruments and non-bankruptcy law, including but not
25 limited to, inspection of, foreclosure upon and sale of the Vehicle; and
26

27 B. Upon foreclosure, and in the event Debtors fail to relinquish possession of the Property,
28 Movant shall be permitted to proceed with its remedies available under non-bankruptcy law; and

1 C. In the event this Chapter 13 proceeding is converted to another Chapter, the order be
2 deemed binding and of full force and effect in any such converted proceeding as to the parties herein;
3 and

4 D. Waive the provisions of Federal Rules of Bankruptcy Procedure, Rule 4001(a)(3); and

5 E. Movant shall be granted such other and further relief as this Court deems just and
6 proper.
7

8 F. Movant requests reimbursement for legal fees and costs incurred in connection with the
9 filing of this proceeding.
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11
12 Dated: June 18, 2015

Weltman, Weinberg & Reis Co., L.P.A.

13 /s/ Raymond F. Moats, III
14 RAYMOND F. MOATS, III, ESQ.
Attorney for Movant,
KeyBank USA
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